

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*
Plaintiffs,

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,
Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

CIVIL ACTION NO: 14-00029-AB

BAP ADMINISTRATOR STATUS REPORT – 4th QUARTER 2019

1. Garretson Resolution Group (n/k/a Epiq Mass Tort) serves as the Baseline Assessment Program (“BAP”) Administrator (“the Administrator”) for the Settlement program in the above-captioned action.¹ Since its appointment by the Court to serve in this role, the Administrator has worked diligently with Class Counsel and Counsel for the NFL Parties (“the Parties”) to meet its responsibilities under the Settlement Agreement. The Administrator submits this Status Report to provide an update to the Court on the status of the Administrator’s work implementing the BAP.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

Maintaining the Qualified BAP Provider Network

2. In implementing the BAP, the Administrator is responsible for establishing and maintaining a network of Qualified BAP Providers to administer the specified baseline assessment examinations under the BAP and authorized medical services under the BAP Supplemental Benefits program.

3. As of December 2, 2019, the Administrator has contracted with 329 Qualified BAP Providers in fifty-two metropolitan areas across the United States. The Administrator is continuing its efforts to enroll Qualified BAP Providers to expand the BAP network wherever necessary to ensure sufficient depth of coverage and improve the efficiency of this program. For cities without a sufficient number of contracted Qualified BAP Providers to fully meet demand, the Administrator continues to seek alternate arrangements to ensure timely appointments for Retired NFL Football Players. In the previous quarter, the Administrator has accommodated demand for clinical neuropsychology appointments in cities with tight capacity by bringing Qualified BAP Providers from other cities with excess provider capacity to administer baseline assessment examinations. Specifically, the Administrator has utilized this approach in several cities with high concentrations of Retired NFL Football Players, including Dallas, Atlanta, Nashville, Seattle, Cincinnati, New Orleans, Birmingham, Little Rock, and Jackson, MS.

Baseline Assessment Examinations Scheduled and Attended to Date

4. The BAP offers a two-part baseline assessment examination, consisting of a clinical neuropsychology appointment lasting an average of six to eight hours and a basic neurological examination lasting approximately one hour. The Administrator's scheduling process is intended to ensure that Retired NFL Football Players are scheduled at a provider location, date, and time acceptable and convenient to them. Typically, the Administrator attempts to schedule the clinical

neuropsychology appointment so that it occurs first, and far enough in advance of the neurology appointment, that the clinical neuropsychologist's report is available for review during the neurology appointment.

5. As of December 2, 2019, the Claims Administrator of the Settlement program has determined that 12,836 Retired NFL Football Players are eligible for participation in the BAP. Of these 12,836 individuals, the Administrator has received requests to schedule baseline assessment examinations from 7,425 Retired NFL Football Players directly or through their attorneys. This represents 57.8% of BAP-eligible Retired NFL Football Players.

6. Of the 7,425 Retired NFL Football Players who have requested appointments, the Administrator has offered one or more appointments with Qualified BAP Providers to 7,224 of them (97.3%). Retired NFL Football Players who have requested appointments have waited a median time of 15 days until the Administrator secured and offered a neuropsychology appointment (consisting of a specific date, time, and location) from a Qualified BAP Provider neuropsychologist. To ensure the neuropsychology appointment takes place before the neurology appointment, the Administrator seeks to confirm with the Retired NFL Football Player or his attorney that the Retired NFL Football Player accepts the offered neuropsychology appointment before securing a neurology appointment. As a result of these activities, the median time between the initial offer of a neuropsychology appointment and the initial offer of a neurology appointment is 64 days. Median time from the initial request until the actual neuropsychology appointment is 102 days; the median time from request until the actual neurology appointment is 171 days. Table 1 summarizes wait times as of December 2, 2019.

Table 1. Appointment Scheduling Wait Times

Metric	Median in Days
Time from request to offered neuropsychology appointment	15
Time from offered neuropsychology appointment to offered neurology appointment	64
Time from request to neuropsychology appointment date	102
Time from request to neurology appointment date	171

7. As of December 2, 2019, 6,109 Retired NFL Football Players (82.3% of those who have requested appointments) have attended a total of 12,117 appointments. This number consists of 5,173 Retired NFL Football Players (69.7%) who have attended two or more² appointments and 936 Retired NFL Football Players (12.6%) who have attended one appointment.

8. Of the 7,224 Retired NFL Football Players for whom the Administrator has scheduled or offered one or more appointments, 6,369 (85.8% of those who have requested appointments) currently have one or more appointments scheduled (including appointments that have already taken place). Of the 6,369 Retired NFL Football Players with scheduled appointments, 5,494 (74.0% of all who have requested) have been scheduled for both neuropsychology and neurology appointments, and 875 (11.8% of all who have requested) have been scheduled for one appointment. For the latter group, the Administrator is working to promptly schedule these Retired NFL Football Players' second appointments.

9. Of the 7,224 Retired NFL Football Players for whom the Administrator has scheduled or offered one or more appointments, 855 have had at least one appointment scheduled or offered to them in the past but did not accept or attend. These 855 Retired NFL Football Players have had a total of 2,416 rejected, cancelled, or missed appointments (an average of 2.8 each). Table 2 breaks down the reasons and sources of those cancellations.

² Certain Retired NFL Football Players have attended more than two appointments because they and/or the Qualified BAP Providers have requested to break up the clinical neuropsychology appointments, which the Administrator has accommodated.

Table 2. Cancellation Reasons – Players with No Active Appointments

Cancellation Reason	Source		
	Player	Provider	Administrator
Confirmed, then Cancelled	14.1%	5.5%	1.0%
Rejected or Withdrawn	56.8%	11.3%	3.2%
Missed	8.1%	0.0%	0.0%

More than half of these Retired NFL Football Players reside in or near eleven cities – Atlanta, Houston, Dallas, New Orleans, Los Angeles, Miami, Jacksonville, Phoenix, Tampa, Charlotte, and Chicago – all of which are among the cities with the highest populations of Retired NFL Football Players. The median time from request to clinical neuropsychology appointment offered among Retired NFL Football Players with no active appointments in these cities ranges from five days in Houston to 42 days in Dallas, with an average of 14 days. In all such cases, the Administrator continues to work with Qualified BAP Providers, and Retired NFL Football Players or their attorneys, to ensure Retired NFL Football Players receive appointments that meet their preference for location, provider, and schedule, while accommodating the Qualified BAP Providers' schedules.

10. Finally, 201 (2.7%) Retired NFL Football Players have requested baseline assessment examinations but have not yet had appointments scheduled or offered to them. Of these 201 Retired NFL Football Players, 161 (80.0%) verbally requested participation in the BAP in the days immediately preceding their deadline for participation in the BAP but have been unresponsive to the Administrator's requests to submit a signed BAP HIPAA Authorization, which is the next step in the scheduling process. The Administrator continues both to follow up with these 161 Retired NFL Football Players and their attorneys to obtain the signed BAP HIPAA Authorizations and to work to secure appointments for the remaining 40 Retired NFL Football

Players. Table 3 summarizes Retired NFL Football Players with requests and appointments scheduled through December 2, 2019.

Table 3. Summary of Requests and Scheduling Activity to Date

Status	Number	% of Requested
Players requesting participation in BAP	7,425	100.0%
Players offered one or more appointments	7,224	97.3%
Players with two appointments currently scheduled	5,494	74.0%
Players with one appointment currently scheduled	875	11.8%
Players with appointments previously offered but none attended or currently scheduled	855	11.5%
Players waiting for their first offered appointments	201	2.7%

Note: Indented rows are subsets of rows above.

Providing Reports from Baseline Assessment Examinations

11. As part of its efforts to ensure prompt and accurate production of medical records and reports, the Administrator conducts training sessions and offers guidance materials to each Qualified BAP Provider. The Administrator is also in regular contact with Qualified BAP Providers as questions or issues arise that may slow the production of medical records and reports. Importantly, to provide incentives for Qualified BAP Providers to submit medical records and reports in a timely manner, the Administrator included a provision in all of its Qualified BAP Provider contracts that makes provider payment contingent on the Qualified BAP Providers submitting such documents.

12. Since inception of the BAP, the Administrator has received BAP-generated medical records and reports from at least one specialist (neurologist or clinical neuropsychologist) for 5,808 Retired NFL Football Players, including records and reports from both specialists for 4,702 Retired NFL Football Players, and records from one specialist for 1,106 Retired NFL Football Players.

13. After the Administrator receives the medical records and reports, the Administrator reviews them for accuracy and completion, particularly against the requirements of the Settlement Agreement.

14. When either the records or reports are incomplete, the Administrator works with the Qualified BAP Provider to ensure completion. The most common reasons for such follow-ups with providers include:

- a. failure to clearly state what, if any, Neurocognitive Impairment level the Retired NFL Football Player qualified for, as defined by the Settlement Agreement;
- b. omission of references to corroborating evidence, as required for diagnosing Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment under the Settlement;
- c. failure to adequately address test validity and/or functional impairment, two topics required to be reported by clinical neuropsychologists as part of their reports; and
- d. failure to meet other administrative requirements as articulated in the Clinician's Interpretation Guide promulgated pursuant to Exhibit A-2 of the Settlement Agreement.

15. Of the 4,702 Retired NFL Football Players for whom both reports have been submitted by Qualified BAP Providers, the Administrator has completed its review process for 4,044 and has published them (or is in the process of publishing them) to the Retired NFL Football Player's online portal. Table 4 shows the status for Retired NFL Football Players whose reports have been submitted to the Administrator as of December 2, 2019.

Table 4. BAP Report Review Status

Status	Number	% of Players with Both Appts Attended
Players who have attended both appointments	5,173	100.0%
Players with both reports submitted to the Administrator	4,702	90.9%
Players with review completed and approved to publish to portal	4,044	78.2%
Players with reports undergoing initial review	11	0.2%
Players with reports in follow up status with Qualified BAP Providers	608	11.8%
Players with reports undergoing review by the Appeals Advisory Panel due to conflicting diagnoses between Qualified BAP Providers (per the Settlement Agreement)	39	0.8%

Note: Indented rows are subsets of rows above.

16. As of December 2, 2019, BAP examinations have resulted in 131 diagnoses of Level 1 Neurocognitive Impairment, 128 diagnoses of Level 1.5 Neurocognitive Impairment, 89 diagnoses of Level 2 Neurocognitive Impairment, with 3,696 Retired NFL Football Players receiving no diagnosis.

BAP Supplemental Benefits

17. Under the Settlement Agreement, a Retired NFL Football Player diagnosed with Level 1 Neurocognitive Impairment is eligible to receive BAP Supplemental Benefits related to the Retired NFL Football Player's impairment in the form of medical treatment, counseling, and/or examination by Qualified BAP Providers, including pharmaceuticals if medically appropriate and prescribed by a Qualified BAP Provider.

18. The Settlement Agreement required Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, to establish the maximum per-player benefit under the BAP Supplemental Benefits on the first anniversary of the commencement of the BAP. Accordingly, on June 6, 2018 (the first anniversary of the commencement of the BAP), Co-Lead Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator,

established the maximum per-player benefit under the BAP Supplemental Benefits at \$35,000. Given the number of Retired NFL Football Players currently eligible for the BAP, this amount was determined to be the maximum benefit that will ensure sufficient funds to pay for all possible baseline assessment examinations, which in turn ensures the overall sufficiency of the BAP Fund. Co-Lead Class Counsel and Counsel for the NFL Parties agreed to revisit this amount after June 6, 2019, the date when eligibility for baseline assessment examinations expires for Retired NFL Football Players born on or before June 6, 1974. The Administrator is currently performing an analysis to support this effort.

19. Once a Retired NFL Football Player's diagnosis of Level 1 Neurocognitive Impairment is finalized, the Administrator contacts the Retired NFL Football Player (or, in the case of a represented Retired NFL Football Player, his attorney) to inform him of his eligibility and schedule an orientation. Given that Retired NFL Football Players eligible for the BAP Supplemental Benefits suffer from moderate cognitive impairment, the Administrator seeks to include a family member or close friend of the Retired NFL Football Player during scheduling who can help the Retired NFL Football Player maximize program benefits. During this orientation, the Administrator outlines the benefits offered and solicits the Retired NFL Football Player's choice of a Qualified BAP Provider neurologist to perform an initial consultation. The purpose of the initial consultation is to review the results of the baseline assessment examination and determine a treatment and evaluation plan for the Retired NFL Football Player. Table 5 shows the status of Retired NFL Football Players who have been notified of their eligibility for participation in the BAP Supplemental Benefits, as of December 2, 2019.

Table 5. BAP Supplemental Benefits Participation Status

Status	Number
Retired Players/Attorneys notified of BAP Supplemental Benefits eligibility	123
Awaiting attorney response to schedule orientation	12
Retired Players in scheduling process for orientations	14
Retired Players with upcoming orientations scheduled	1
Retired Players with orientation complete	96
Awaiting provider selection by Retired Player	22
Contracting with selected provider	4
In process of scheduling initial consultation	4
Initial consultation upcoming	9
Initial consultation attended/receiving ongoing benefit	57

Note: Indented rows are subsets of rows above.

20. During the quarter, the Administrator initiated a pilot program to evaluate the feasibility of offering cognitive rehabilitation therapy, a treatment that had been requested by several Settlement Class Members and their treating Qualified BAP Providers. As of December 2, 2019, the Administrator had contracted with two Qualified BAP Providers to participate in the pilot program, with a third expected to be signed shortly. In addition, the first three Retired NFL Football Players to participate in the pilot have undergone an initial assessment and are now following a customized treatment plan, with therapy for an additional ten Retired NFL Football Players expected to be underway within the next two months.

Respectfully submitted,

BAP ADMINISTRATOR

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